

RECORDATION NO. 9662-12 35 PM Filed & Recorded

AUG 29 1978 -12 35 PM



LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40203

TELEPHONE (502) 587-5235

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INTERSTATE COMMERCE COMMISSION

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LAW DEPARTMENT

AUG 29 1978 -12 35 PM

August 28, 1978

DAVID M. YEARWOOD
GENERAL ATTORNEY

INTERSTATE COMMERCE COMMISSION

Mr. H. G. Homme, Jr.

Acting Secretary

Interstate Commerce Commission

Washington, D. C. 20423

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INTERSTATE COMMERCE COMMISSION

8-241A000

DATE 8-29-1978

Fee \$ 100

ICC Washington, D. C.

Agreement
and assignment,
Lease of Railroad
Equipment, and
Assignment
of Lease and
Agreement
(each covered
under
separate
letter attached)

Dear Mr. Secretary:

There is transmitted to you herewith for filing and recordation, pursuant to Section 20c of the Interstate Commerce Act, duly executed counterparts of a Conditional Sale Agreement dated as of July 15, 1978 between Louisville and Nashville Railroad Company, as Vendor, whose address is 908 West Broadway, Louisville, Kentucky 40203, and The Liberty National Leasing Company, as Vendee, whose address is 416 West Jefferson Street, Louisville, Kentucky 40202.

The equipment covered by said Conditional Sale Agreement is seven hundred forty-seven (747) 70-ton open top hopper cars bearing the Louisville and Nashville Railroad Company's road numbers set forth in Annex A to said Agreement, a copy of which is attached hereto.

There has been no prior recordation of any document relating to this transaction.

Attached hereto is a draft in the amount of \$50 payable to the Treasurer of the United States covering the prescribed recordation fee for said Conditional Sale Agreement.

This letter of transmittal is signed by an officer of Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

After recordation, please forward the recorded counterparts of said Conditional Sale Agreement to:

Grand Johnson

Mr. Allen H. Harrison, Jr.
Wilmer, Cutler & Pickering
1666 K Street, N. W.
Washington, D. C. 20006

Respectfully yours,

Louisville and Nashville Railroad Company

By David M. Yearwood
David M. Yearwood
General Attorney

Attachments

SEE NEXT
LETTERS
ATTACHED
FOR ALL
DOCS FILED
HERE UNDER

9662 / C
RECORDATION NO. Filed & Recorded

AUG 20 1978 - 12 35 PM

INLAND COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 15, 1978, by and between THE LIBERTY NATIONAL LEASING COMPANY, a Kentucky corporation (hereinafter called the Lessor or the Vendee), and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee of a Commingled Pension Trust and as Agent for Various Institutional Investors (hereinafter called the Assignee).

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Document) with The Louisville and Nashville Railroad Company (hereinafter called the Vendor or Lessee), providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS in order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Assignee to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Document), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Assignee, as collateral security for the payment and performance of the obligations of the Vendee under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, liquidated damages, or otherwise

(such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Assignee in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include, either before or after an Event of Default shall have occurred and be continuing under the Lease, payments to be made by the Lessee or the Vendee pursuant to §§ 6 and 9 of the Lease (except indemnification payments owing to the Assignee pursuant thereto or pursuant to Articles 6 and 13 of the Security Document and except to the extent that the Lessor is in default under Paragraph 6 of this Assignment); provided, however, that the Vendee shall have no right to exercise any of the remedies under the Lease (other than § 10(a) thereof) to enforce payment of such excluded amounts and further, provided, after an Event of Default shall have occurred and while it shall be continuing, no payments otherwise excluded from this Assignment pursuant to this sentence may be made to or retained by the Vendee out of the proceeds of the sale or other disposition of the Units unless and until full payment of principal of and interest on the Conditional Sale Indebtedness shall have been made.

The Assignee agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease, subject to the provisions of the Lessee's Consent and Agreement attached hereto (hereinafter called the Consent) permitting certain payments to be made directly to the Vendee. To the extent received, the Assignee will apply such Payments to satisfy the obligations of the Lessor under the Security Document then due and payable, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Document could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor (or to such other party as may be specified by

the Lessor), by bank wire to the Lessor at such address as may be specified to the Assignee in writing, and such balance shall be retained by the Lessor. If the Assignee shall not receive any rental payment under § 3 of the Lease payable to it as provided in the Consent when due, the Assignee shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Assignee to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Document. The Lessor will furnish to the Assignee and the Lessee a schedule, with such changes as may be appropriate from time to time, setting forth the amounts due the Vendor under the Security Document and the Lessor under the Lease on each date for the payment thereof.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Assignee.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Assignee, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Assignee the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the

terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Assignee may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Document, this Assignment and all rights herein assigned to the Assignee shall terminate, and all estate, right, title and interest of the Assignee in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than any created by the Security Document in favor of the Assignee) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Assignee), not arising out of the transactions contemplated by the Security Document or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Assignee's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Assignee, adversely affect such interests of the Assignee.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Assignee in order to confirm or further assure, the interest of the Assignee hereunder.

8. The Assignee may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due, but the Lessee shall be under no obligation to any subsequent or successive assignee except upon written notice of such assignment from the Assignee. In the event of any such assignment and notice, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

9. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Assignee at P.O. Box 1389, Church Street Station, New York, New York 10008, Attention of Trust and Investment Division, or at such other address as the Assignee shall specify in writing. All payments to be made hereunder shall be paid as specified by the Investor in writing.

11. The Assignee hereby agrees with the Lessor that the Assignee will not, unless an Event of Default under the Security Document (as defined therein) has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Assignee by this Assignment, except the right to apply the Payments as provided in Paragraph 1 hereof.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Document as long as there is no event of default under the Security Document; provided, however, that the Lessor shall not take any action under Section 10 of the Lease without the written consent of the Assignee.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names by officers thereunto duly authorized, and their respective

seals to be affixed and duly attested, all as of the date first above written.

THE LIBERTY NATIONAL LEASING
COMPANY,

by

J. E. Vittitow
Vice President

[Corporate Seal]

Attest:

J. E. Vittitow
SECRETARY

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, as Trustee of a
Commingled Pension Trust and
as Agent for Various Institu-
tional Investors,

by

John F. Goydas
Vice President

[Corporate Seal]

Attest:

John P. Hughes
JOHN P. HUGHES
Assistant Secretary

STATE OF NEW YORK,)
) SS.:
 COUNTY OF NEW YORK,)

On this 24th day of August 1978, before me personally appeared John F. Goydas, to me personally known, who, being by me duly sworn, says that he is a Vice President of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

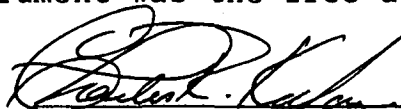
GERALD H. OSTERBERG
 Notary Public, State of N. Y.
 No. 41-2981650
 Qualified in Queens County
 Cert. filed in New York County
 Comm. expires March 30, 1979


 Notary Public

[Notarial Seal]

COMMONWEALTH OF KENTUCKY,)
) SS.:
 COUNTY OF JEFFERSON,)

On this 28th day of August 1978, before me personally appeared J. E. V. H. H. H., to me personally known, who, being by me duly sworn, says that he is a Vice President of THE LIBERTY NATIONAL LEASING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


 Notary Public

[Notarial Seal]

Notary Public, State at Large, Ky.
 My Commission expires Dec. 1, 1980

CONSENT AND AGREEMENT

The undersigned, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages and other moneys (other than the payments excluded from the Lease Assignment pursuant to Paragraph 1 thereof) provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Morgan Guaranty Trust Company of New York, as Trustee of a Commingled Pension Trust and as Agent for Various Institutional Investors (hereinafter called the Assignee), the assignee named in the Assignment, at such address as may be furnished in writing to the undersigned by the Assignee;

(2) the Assignee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Assignee were named therein as the Lessor;

(3) the Assignee shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

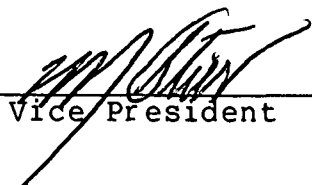
(4) the Lease shall not, without the prior written consent of the Assignee, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the

Assignee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said State.

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY,

by


ASST. Vice President

[Corporate Seal]

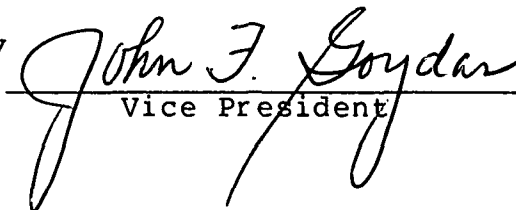
Attest:


ATTESTING OFFICER

The foregoing Consent and Agreement is hereby accepted as of the 15th day of July 1978.

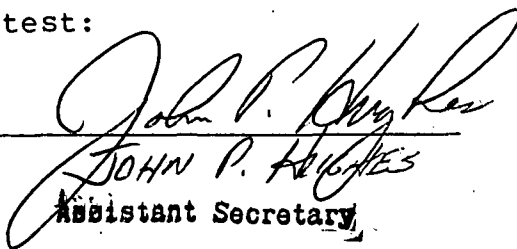
MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, as Trustee of a
Commingled Pension Trust and
as Agent for Various Institutional Investors,

by


Vice President

[Corporate Seal]

Attest:


JOHN P. HUGHES
Assistant Secretary

COMMONWEALTH OF KENTUCKY,)
) ss.:
 COUNTY OF JEFFERSON,)

On this 28th day of August 1978, before me personally appeared M. A. Stier, to me personally known, who, being by me duly sworn, says that he is a Vice President of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon W. Bowles
 Notary Public
 Sharon W. Bowles
 NOTARY PUBLIC, STATE AT LARGE
 My Commission expires July 26, 1982

[Notarial Seal]

STATE OF NEW YORK,)
) ss.:
 COUNTY OF NEW YORK,)

On this 24th day of August 1978, before me personally appeared John F. Goydas, to me personally known, who, being by me duly sworn, says that he is a Vice President of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

GERALD W. OSTERBERG
 Notary Public, State of N. Y.
 No. 41-2981650
 Qualified in Queens County
 Cert. filed in New York County
 Comm. Expires March 30, 1979

[Signature]
 Notary Public

[Notarial Seal]